

Approved:

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MAYOR AND COUNCIL  
ROCKVILLE, MARYLAND  
April 9, 2012  
Meeting No. 14-12

**Motion** to convene in Executive Session pursuant to Section 10-508(a)(1)(i) and (ii) of the State Government Article of the Annotated Code of Maryland to discuss the appointment and employment of the City Manager, an official over whom it has jurisdiction; and to discuss a personnel matter that affects one or more specific individuals.

Moved by Councilmember Newton, seconded by Councilmember Pierzchala and unanimously approved.

The Mayor and Council convened in Executive Session at 6:05 pm on Monday, April 9, 2012, in the Diamond Back Terrapin Conference Room, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland.

Present at the Executive Session were Mayor Phyllis Marcuccio and Councilmembers John F. Hall, Jr., Tom Moore, Bridget Donnell Newton and Mark Pierzchala. Also present were Acting City Clerk Brenda Bean and John Anzivino, Senior Vice President of Springsted, the executive search firm employed by Rockville. At 7:00 pm, Acting City Manager Jenny Kimball, City Attorney Debra Daniel and Director of Human Resources Carlos Vargas arrived.

The topic of discussion was the status of the City Manager Search and recent articles concerning City personnel that appeared in a news publication.

The Executive session adjourned at 7:15 pm and the Mayor and Council reconvened in a regular meeting in at 7:30 pm on Monday, April 9, 2012 in the Mayor and Council Chambers, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland 20850.

**Present:**

Mayor Phyllis Marcuccio, Councilmember John F. Hall, Jr., Councilmember Tom Moore, Councilmember Bridget Donnell Newton, and Councilmember Mark Pierzchala

**Staff Present:**

Acting City Manager Jenny Kimball, Acting City Clerk Brenda Bean and City Attorney Debra Daniel.

## **1. Convene**

The Mayor and Council convened in a regular meeting at 7:30 pm on Monday, April 9, 2012, in the Mayor and Council Chambers, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland 20850.

## **2. Pledge of Allegiance**

Mayor Marcuccio led the Pledge of Allegiance.

## **3. Agenda Review**

No changes were reported to the agenda.

## **4. City Manager's Report**

Acting City Manager Kimball reported that the April edition of Rockville Reports would be mailed soon, and the Spring Leaf Collection in Rockville started today.

## **5. Citizen's Forum**

<b><i>Citizen</i></b>	<b><i>Issue</i></b>
Gerri Kochan	Department of Aging and Disabilities IDEAL study for seniors 80 or older.
Roald Schrack	Charter Review Commission; the new Commission should look at the previous Commission's reports; whatever the outcome, it should go to referendum.
Jim Marrinan	Process for Charter Review Commission and unfair attacks on a sitting member of the Council.
Andrea Jolly	Funding request under FY2013 for the Rockville Rewards program.
Theresa Defino	Process for Charter Review Commission; opposes four year terms.

## **6. Mayor and Council's Response to Citizen's Forum and Announcements**

Mayor Marcuccio	Served on the last Charter Review Commission and at that time thought two year terms were best. Having since been elected to office now believes four year terms would be better; may be difficult to find people over 80 that are in ideal health.
Councilmember Pierzchala	His profession deals with health surveys and is familiar with the IDEAL study; it is how we get information about the health of the United States; thanked Gerri Kochan for the information and asked that she give any spare copies

to the press; read the 2002 Charter Review Report – a very good report; agrees with Mr. Marrinan that Councilmember Moore was unfairly maligned; has seen attacks both ways (from dais to citizens and from citizens to dais.)

Councilmember Newton

Appreciates learning of the IDEAL study and believes she may know one or two people that might qualify; this body needs to model good behavior.

Councilmember Hall

Thanks to Gerri Kochan for the information on the IDEAL study; appreciates the views of the Charter Review Commission; Ms. Defino's remarks were concise and well stated position; appreciates that Mr. Schrack did not mention the non-citizen voting issue and said that this item will eventually be taken up by the Charter Review Commission; this body is making good progress on working together and hopes that evolution will reach out in the community.

Councilmember Moore

Thanked Mr. Marrinan for his good suggestions regarding the Charter Review Commission and for his kind words; civility is something that we should all strive for; thanked Andrea Jolly and said that Rockville Rewards is a valuable program.

## **7. Appointments/Reappointments and Announcements of Vacancies**

**Motion** to reappoint Donald Wallesz as a Tenant Representative to the Landlord Tenant Affairs Commission until 4/01/15.

Moved by Councilmember Hall, seconded by Councilmember Newton and unanimously approved.

Mayor Marcuccio announced vacancies to the following Boards and Commissions: Compensation Commission, Human Rights Commission, Landlord Tenant Affairs Commission Sign Review Board, and Senior Citizens Commission.

## **8 Adoption of an Ordinance to Amend Ordinance #17-11 to Appropriate Funds and Levy Taxes for Fiscal Year 2012.**

Erika Tompkins of the Budget and Finance Office gave a staff presentation highlighting the recommended changes in this budget amendment. Ensuing discussion between the Mayor and Council and staff included:

- RedGate lease and when will it no longer appear; RedGate cap being absorbed back into the general fund; possibility of a RedGate Enterprise Fund; see how the lease agreement goes; Billy Casper paying down outstanding debt.
- Staff from Beall Elementary after school program transferred to other programs; also resulted in one staff member reduction (temporary employee).

- Increase in personal property taxes (increase in what we think the revenues are going to be.)

**Motion:** to adopt Ordinance to Amend Ordinance #17-11 to Appropriate Funds and Levy Taxes for Fiscal Year 2012.

Moved by Councilmember Hall, seconded by Councilmember Mark Pierzchala and unanimously approved.

**9. Approval - Improvements to Rockville Town Square Plaza - Presentation of Proposals by Federal Realty Investment Trust (FRIT).**

Burt Hall, Director of Recreation and Parks, introduced the representatives from Federal Realty who presented the Mayor and Council with proposed changes to Rockville Town Square including plans for a synthetic turf area, more trees, decked seating areas, shade structures, new play forms, and a combination fire pit and water feature. Ensuing discussion between the Mayor and Council and staff included: safety regarding fire pit; appreciation to FRIT for improvements to Town Square; ice rink huge success; maintenance relative to dogs on turf; bike racks in the Washington Street garages and signage for same; metal benches without backs allowing one to sit from any direction; and associated risks with loose furniture.

**10. Discussion and Instructions Rockville Metro Station Pedestrian Bridge Lettering**

This item was tabled.

**11. FY 2013 Budget Worksession #1 - Operating Budget and Capital Improvements Program.**

Acting City Manager Kimball stated that this is the kickoff to the departmental budget presentations.

**Police Department**

Chief of Police Terry Treschuk presented highlights followed by discussion:

- Great operation; fortunate with consistent dedication
- Speed camera contract increased citations (\$400,000 a one-time thing or annual)
- Radio upgrade to 800MHZ - looking for about \$2.3 million in federal grant money; working with other municipalities to do a more regional approach.
- Number of DUI arrests from FY06 forward has grown and then dropped dramatically in FY11; impact to budget and would like to see the number increase; increased number of calls for service.
- Renovations for the new headquarters are in the Recreation and Parks budget; savings to RCPD because of two leases no longer necessary for Community Services and Inspection Services.
- The need for more police officers and the COPS Hiring Federal Grant; working towards having 70 sworn officers total (13 more than currently)

- Emergency cooperation in whole area is going well; work within the County and COG areas; good relationship with Metro Police

### **City Manager's Department**

Acting City Manager Jenny Kimball presented highlights followed by discussion:

- No funding for Rockville Rewards because the growth and development of the Rockville Chamber of Commerce can likely pull off the program without additional help from the City.
- Increase in budget and benefits – realize salary savings due to City Manager not being hired until after budget adoption; across the board with salary savings; everything gets pulled together and redistributed in areas where there is need; salaries are budgeted at 100%; no guess-work about when vacancies might be filled; not every vacancy has savings associated with it because of benefit payouts; why did this not apply to RedGate Funds; actually cost more because of payouts of leave in addition to severance.
- Discussion on the \$872,000 amount for Graphics Division. A large portion due to postage, also maintenance and paper associated with five large copiers; staff will provide the Mayor and Council with a breakdown for Graphics and Printing; Post Office has a service where they deliver something to every household in a geographic area; this service was used with the distribution of the Recreation Guides; process for web redesign; high-definition TV cameras not kind to people testifying; keep this in mind when purchasing new equipment; process of going to high definition.

### **Information and Technology**

Director of Information and Technology Mike Cannon presented highlights:

- Land revenue dropping; big drop in cell phone tower revenue; negotiating with carriers regarding the Glen Mill Water Tank; franchise rights came in higher
- Contractual Services, adopted vs. spent; a large part of that due to not filling a vacant position
- 15 different languages spoken in City Hall; thanks to staff volunteering translation services
- Document Imaging - cost benefit; the only done thus far has just been the study which identified what type of cost savings that would be realized over time; Granicus costs.
- Funds realized for cable franchise fees; golf course monopole land rental
- Communication fees and taxes that could lead to statewide franchising; State's burden on localities
- IT Strategic Plan schedule; needs to be reviewed on an annual basis;

### **Office of the City Clerk and Mayor and Council**

Assistant to the City Clerk Sara Ferrell presented the highlights and said that there were cost savings under Mayor and Council travel line item due to a reduction in the amount of members traveling. The primary expense now is for the Maryland Municipal League conference held in June. Ms. Ferrell reported a cost savings under the Clerk's budget as this is a non- election year. Additionally, monies for the part time employee associated with the election were removed.

## **12. Discussion and Instructions - Development of a Financial Management Policy for Economic Development Revenue Bonds.**

Director of Finance Gavin Cohen provided the background and staff's recommendations. He said that document mirrors Montgomery County's. Ensuing discussion between the Mayor and Council included:

Councilmember Pierzchala – Happens so rarely does not understand the need for a policy; in general a good thing; surprised that there are not more requests for bonds; agrees that item #7 is unnecessary and maybe harmful (would add monetary and time costs); bond market has a certain discipline to it; agrees with the rest of the document.

Councilmember Newton - pleased that we now have a policy and does wish to keep #7; wants to be sure that there is indemnification language to protect the City.

Mayor Marcuccio – Noted her concern that this was done in haste and only just recently signed the documents; completely agrees with having a policy in place; good for the City.

**Motion:** to strike item #7 under Criteria dealing with an independent financial advisor.

Moved by Councilmember Pierzchala, seconded by Councilmember Moore.

In discussion, Councilmember Moore said that the removal of item #7 helps the economic development of the City. Councilmember Newton said that her job as a steward of the City is to protect it and does not believe that item #7 is a harmful. She feels strongly about an indemnification clause citing risks associated with applicants who may default. Councilmember Pierzchala said that the City is in no way harmed by this and the protection for the City comes from federal law; it is purposeful and good policy and is important for nonprofit organizations. Councilmember Moore said that this policy was modeled after Montgomery County's, who has far more understanding about this than Rockville, and the County thought that #7 was not a good provision.

Vote: Councilmembers Pierzchala and Moore approving and Mayor Marcuccio and Councilmembers Newton and Hall opposing. Motion was defeated. 3-2.

**Motion:** to approve the Financial Management Policy for Economic Development Revenue Bonds.

Moved by Councilmember Newton, seconded by Councilmember Hall.

In discussion, Councilmember Pierzchala thanked staff for their hard work but believes that the imposition of additional process on top of an already heavy process does not make sense. Councilmember Moore said that he would not vote in favor of this policy and said that a bad policy is worse than no policy. He said that is a chance to help out business in Rockville and is sorry that it will not happen. Councilmember Newton said that we cannot keep comparing

ourselves to Montgomery County. She believes the policy to be a good one and said that it will help us going forward.

Vote: Mayor Marcuccio and Councilmembers Newton and Hall approving, and Councilmembers Pierzchala and Moore opposing. Motion carries 3-2.

### **13. Discussion - Charter Review Commission**

Mayor Marcuccio stated that she is interested in forming a Charter Review Commission for the purpose of making recommendations on possible four year terms as well as a seven member Council. Councilmember Newton said that it might be better to not suggest those two items but to leave it open for discussion; more productive to leave it open. Councilmember Hall said that he was on the Council the last time a Charter Review Commission completed work; he identified three people that he would like to serve and is not in favor of 4-year terms or the expansion of the council. Councilmember Pierzchala has identified two people that he would like to serve and believes the scope of the work should focus on the length of terms and the size of the Council. He said it would make the work of the Commission easier. Councilmember Moore said that the scope should be open and is interested in getting some of Rockville's most committed citizens together to hash it out. Councilmember Moore said he would also like the Commission to discuss the schedule of City elections. They have occurred at different times. Would there be an advantage to holding elections on the weekend or in the spring. There was agreement that each Councilmember would provide two names (same composition as the last Charter Commission) and that Mayor Marcuccio would nominate the Chair. The focus areas of the Commission would be: size of Council, length of terms and schedule of elections. Councilmember Hall said that he would like a ballot referendum on the first two focus items. Staff will formulate a resolution to establish a Charter Review Commission.

### **14. Discussion and Instructions - Request for an Opinion of the Attorney General**

**Motion:** to take Councilmember Moore's earlier motion off the table for discussion.

Moved by Councilmember Moore and seconded by Councilmember Pierzchala.

In discussion, Councilmember Pierzchala does not believe that this item needs to be untabled. According to the Mayor and Council Rules and Procedures, it only takes two councilmembers to place an item on the agenda. Both he and Councilmember Pierzchala want this as an agenda item. Additionally, there is nothing in the rules dealing with tabling and he is of the opinion that this matter simply goes back onto the agenda.

Vote: Mayor Marcuccio and Councilmembers Hall, Moore, and Pierzchala approving, and Councilmember Newton opposing. Motion carries: 4-1.

With respect to the Adequate Public Facilities Ordinance, Councilmember Moore said that he would like to ask the following 4 questions of the Maryland Attorney General:

- 1) Does the local jurisdiction have the authority to enact and enforce an APFO that restricts development based on a public facility the jurisdiction does not plan to stage or provide?
- 2) If so, must the standards in that ordinance be substantially similar to the standards of the jurisdiction that does plan, stage or provide the public facility?

- 3) when a jurisdiction's APFO restricts development based on a public facility that it does not plan, stage or provide, must it provide a means of mitigation?
- 4) what does the phrase substantially similar mean in the APFO context? For example, are the schools standards in Rockville's APFO substantially similar to those in Montgomery County's?

Based on discussions, Councilmember Moore said that it has been determined that we know the answer to number No. 1 and will move to strike that question from the list.

**Motion:** to instruct the City Attorney to prepare an opinion and as the following questions of the Maryland Attorney General as soon as possible.

Moved by Councilmember Moore and seconded by Councilmember Pierzchala.

In discussion, Councilmember Moore said it is extremely important to the City to get these questions answered. A vote by the Mayor and Council is necessary. He said that the City would be receiving the information for free, on its own terms and schedule instead of at the short end of an adverse court judgment.

Councilmember Newton asked Councilmember Moore about research he has done that was not provided by the court decisions or in prior discussions. Councilmember Moore responded that he has spoken with many people who were involved in creating the City's Adequate Public Facility Ordinance. There were concerns on the Planning Commission at that time as to whether these questions should be answered before moving ahead with it. He said that the process moved forward and the questions were never answered.

There was broad ensuing discussion that included:

- There is no court case or statute on this
- The Maryland Department of Planning suggests that a municipality's APFO match the surrounding jurisdiction.
- Rockville's standards are more lenient than Bowie, Hagerstown, Annapolis, Frederick and Gaithersburg; is an assumption being made that those jurisdictions don't have the authority to enact an APFO; why would we ask a question that involves them; when there are state-wide applications the Attorney General will answer questions
- If the Attorney General says that our APFO is right, that may prevent future litigation; didn't the ruling by the Court of appeals already tell us we were right; it told us that City law was not applied by the City when it went to apply it.
- The term "substantially similar" is not at all defined under Article 66B
- It is presumptuous for the City to ask a question that affects two dozen other municipalities, they might perceive this as hostile; doing this without any coordination with the other jurisdictions lacks professional courtesy.
- Considerable concerns were expressed by members of the Planning Commission about proceeding with an APFO before those concerns were addressed



- Having answers to the questions posed will ultimately help the Mayor and Council when it takes up the APFO.
- If the concern has to do with just schools, why are the questions so broad; did not want to restrict it unnecessarily.
- Would Question No. 2 read better “Must the standards in a municipality’s APFO be substantially similar to the standards of a jurisdiction that does plan, stage or provide a given public facility?”
- With the removal of Question No. 1, some rewording of the remaining three may be necessary in order for them to make sense.
- Discussion on the term public facility and those that Rockville does not control but that Montgomery County does; in the City’s context, schools are the hot button.
- An Attorney General opinion would provide great legal backup though not preclude lawsuits from being filed.
- Concerns that these questions may weaken the City’s APFO

Councilmember Newton called the question. A vote was taken on calling the question and there was a unanimous vote to call the question.

**Vote on the motion on the table.** Councilmembers Moore and Pierzchala approving and Mayor Marcuccio and Councilmembers Hall and Newton opposing. The motion failed 3-2.

## **15. Review and Comment - Mayor and Council Action Report**

Councilmember Newton asked about the status of the addition of a retiree to the Retirement Board. Councilmember Pierzchala said that the Retirement Board was going to write a memo to the Mayor and Council that outlines the issues and that the decision should ultimately be the Mayor and Council’s. Regarding the contribution for VisArts, Library and Rooftop customer parking, Councilmember Newton asked if this is something we can work on with the County Council. Ms. Kimball responded that she had heard from the County and they indicated that they are not agreeable to using the money that way. Mayor Marcuccio said that the County will not give the City all of its tax duplication funds and suggested that we go back and ask the question again.

## **16. Review and Comment - Future Agendas**

Councilmember Newton noted that the REDI and Chamber updates were still listed on future agendas even though there was discussion to do this quarterly. Councilmember Hall noted that we will need to add an additional item for the Executive Session next week.

## **17. Mayor and Council Liaisons to Boards and Commissions Report**

There was discussion on the Planning Commission report recently received via email and Mayor Marcuccio requested a hard copy of the document.

## **18. Old/New Business**

Councilmember Pierzchala asked for clarification with respect to the tabling of an agenda item. Ms. Daniel read the relevant portion of the Mayor and Council's Rules and Procedures. Councilmember Moore said that the Mayor and Council's Rules and Procedures does not have language about when it is proper to table and therefore the fallback document should be Roberts Rules of Order where it states that it is improper to table something just because you don't want to talk about it. Councilmember Newton said that she had made the motion to table the item and perhaps should have called the question instead. She said there was a great deal of discussion that evening primarily between Councilmembers Moore and Hall and it was apparent that it was not going anywhere. As the elected body, Councilmember Newton believes a professional courtesy is owed to one another and issues should not be belabored. She apologized for not calling the question and said at some point it becomes an exercise in futility. Mayor Marcuccio said that she did not believe an error was made for tabling the Attorney General item.

Mayor Marcuccio mentioned the recent death of Tom Lawrey and offered condolences to his family.

Mayor Marcuccio said that she is interested in holding a State of the City Address and thought it would be nice to model it similar to that of the City of Gaithersburg where each councilmember had a presentation. She said she would like to try to do this in May or June. There was agreement by all to hold a State of the City and that perhaps September might be a better time to do this.

Mayor Marcuccio said that she is also interested in pursuing the formation of a Financial Advisory Committee for the City of Rockville. Councilmember Pierzchala asked what the purview of this group would be and suggested that everything be outlined in a future agenda. Councilmember Newton said that this was her idea several years back and that she would be happy to work with staff to prepare necessary items for the agenda.

Mayor Marcuccio said that once the ethics legislation is resolved she is anxious for Rockville to establish an Ethics Commission.

## **19. Adjournment**

**Motion:** to adjourn.

Moved by Councilmember Hall, seconded by Councilmember Pierzchala and unanimously approved.

There being no further business, the meeting adjourned at 11:45 pm.